



SHERWOOD CITY COUNCIL MINUTES
22560 SW Pine St., Sherwood, Or
December 17, 2013

EXECUTIVE SESSION

1. **CALL TO ORDER:** Mayor Middleton called the meeting to order at 6:33 pm.
2. **COUNCIL PRESENT:** Mayor Bill Middleton, Councilors Dave Grant, Robyn Folsom, Matt Langer and Krisanna Clark. Councilor Bill Butterfield arrived at 6:38 pm and Council President Linda Henderson arrived at 6:40 pm.
3. **STAFF AND LEGAL COUNSEL PRESENT:** City Manager Joseph Gall, Assistant City Manager Tom Pessemier, Finance Director Julie Blums, City Recorder Sylvia Murphy and City Attorney Chris Crean.
4. **TOPICS:**
 - A. Exempt Public Records pursuant 192.660 (2)(f).
5. **ADJOURN:**

Mayor Middleton adjourned the executive session at 6:56 pm and convened to the regular Council meeting.

CITY COUNCIL MEETING

1. **CALL TO ORDER:** Mayor Middleton called the meeting to order at 7:02 pm.
2. **PLEDGE OF ALLEGIANCE:**
3. **COUNCIL PRESENT:** Mayor Bill Middleton, Council President Linda Henderson, Councilors Bill Butterfield, Dave Grant, Krisanna Clark, Robyn Folsom and Matt Langer.
4. **STAFF AND LEGAL COUNSEL PRESENT:** Joseph Gall City Manager, Tom Pessemier Assistant City Manager, Police Chief Jeff Groth, Craig Sheldon Public Works Director, Julie Blums Finance Director, Julia Hajduk Community Development Director, Kristen Switzer Community Services Director, City Engineer Bob Galati, Police Captain Mark Daniel, and Sylvia Murphy City Recorder. City Attorney Chris Crean.

5. CONSENT AGENDA:

- A. Approval of November 5, 2013 City Council Meeting Minutes**
- B. Approval of November 19, 2013 City Council Meeting Minutes**
- C. Approval of December 3, 2013 City Council Meeting Minutes**
- D. Resolution 2013-063 Canvassing returns of the November 5, 2013 Washington County General Election, proclaiming results and directing the City Recorder to enter the election results into the record**
- E. Resolution 2013-064 Authorizing the City Manager to execute a contract with AKS Engineering and Forestry for the design of the Columbia Street Regional Stormwater Facility**

MOTION: FROM COUNCIL PRESIDENT HENDERSON TO ADOPT THE CONSENT AGENDA, SECONDED BY COUNCILOR CLARK, MOTION PASSED 7:0, ALL MEMBERS VOTED IN FAVOR.

Mayor Middleton addressed the next agenda item.

6. PRESENTATIONS:

A. Eagle Scout Recognition

There were no scouts present. Mayor Middleton addressed the next agenda item.

B. Recognition of TVF&R Captain Dan Atkisson

Mayor Middleton recognized Captain Dan Atkisson who will be retiring. He stated Captain Dan was promoted in 1999 and assigned to Sherwood Station 33. During his 13 years in Sherwood he demonstrated an outgoing engagement and positive attitude and his leadership is known throughout the district. Captain Dan provided leadership for many volunteers who have worked at Station 33 and he respected their sacrifice to the community and respected them as community members and treated them as his crews. Mayor Middleton provided examples of community events and functions in which Captain Dan participated in as well as his efforts in building community partnerships. He stated Captain Atkisson has made efforts to know the citizens and everyone refers to him as Captain Dan. He has been a humble, thankful, professional, positive servant to the citizens and the crews that have served at the station. His legacy will live on for decades and he will not be forgotten. Mayor Middleton stated he has worked with Captain Dan for years and it was an honor. Mayor Middleton presented Captain Dan with a Certificate of Appreciation and a City jacket. Mayor Middleton spoke of the unbelievable relationship the City has with TVFR and thanked them for their service.

Captain Dan stated he has been blessed to serve the City of Sherwood since 1999 as the Captain of the fire station. He said it has been an amazing and wonderful experience to serve in the 5th best small City in America, a place where you call home. He said he is just one in a long line of men and women who have dedicated their lives to keeping Sherwood safe and secure for over 100 years. He said the citizens of Sherwood became aware they needed fire protection when in 1898 and in 1911 catastrophic fires ravaged the City and they joined together and built a 75 foot water tower, wooden board fire mains and purchased fire hoses to protect their homes and businesses. He said the first volunteer fire department was organized and the Fire Laddy's selected W.T. Fisk as their first Fire Chief in 1915. He said this legacy of service continues to this day with our volunteer and career firefighters available and ready to serve 24 hours a day and 365 days a year. He said when he was first assigned to Sherwood Station 33

it was clear that our fire station was not just a Tualatin Valley Fire and Rescue station, the families that live here take ownership in their station as do the volunteer and career firefighters. He said he felt cared for, valued and loved by the City staff and the citizens that he had been charged to protect and serve, and said you have made me a family member of your wonderful town. He said when you call 911 for help or come to the fire station for assistance or bring your children to the station for a tour you will always receive more than just a quick and efficient trained professional responding to your questions or emergency. He said you will also get a caring, compassionate family member who will welcome you in and take the time to value you and treat you as a member of the Sherwood family. He stated at the end of the day it will not matter how well we perform, if we do not also share our sincere compassion, care and respect to the ones we serve, thank you all for allowing me to be a part of the fine community family we call Sherwood.

Captain Dan stated they will be having an Open House January 25th, 2-5pm at the Sherwood Fire Station and he welcomed the community.

Mayor Middleton addressed the next agenda item.

C. Code of Conduct

City Manager Joe Gall stated this business was originally scheduled to be in a Council work session and the Mayor suggested presenting in open session. He said if the Council provides direction to staff to draft an ordinance enacting a code of conduct that would affect the public, there would be interest in the information. Mr. Gall stated he will introduce the topic and invite Dave Nelson the CIS Public Safety Manager to explain. Mr. Gall said he wanted the Council to know what a code of conduct is and where it comes from. He said Mr. Nelson will talk more in detail and said staff has been working closely with CIS (City County Insurance) to evaluate safety for employees in the building. He said CIS is our insurance agent and risk management firm and one of the suggestions that came out of the analysis was adopting a code of conduct, similar to what other jurisdictions have. He said the document provided to the Council (see record, Exhibit A) is a preliminary draft of an ordinance based on the City of Tigard's adopted ordinance.

Mr. Nelson came forward and provided a brief overview of the services CIS provides to the City. He stated they are the insurance company organization that insures the City of Sherwood and they insure most of the cities in the state with the exception of Portland, Salem, Eugene and Medford, and insure 28 of 36 Counties. He said his specific role is the Public Safety Manager which oversees the Risk Management Division and provides risk management services to our public safety members. He noted he has worked with Police Chief Groth and since he has been with CIS he has had a number of interactions with the City. He said dating back to 2010 he did some work with violence training with staff and educating them on what work place violence is, ways to see and observe it, and ways to react and report. He stated in 2011 he worked with the Police Department reviewing best practices and what that meant. He commented in 2013 they started doing security assessments with Chief Groth and looking at all the buildings in the City, making determinations on ways to improve risk and security and worked on claim review with the Police Department administrative staff and looking at how claims have occurred in the police department, looking at risk management techniques to reduce those claims in the future. He stated these are the types of services he provides to Sherwood and other cities in the State.

He said he was asked to look at the proposal the Council is discussing this evening as far as from a risk management perspective whether this is going to be a fit for the overall security. He noted he looks at this as an extension of an exclusion. He said when he worked as the Chief and as the City Administrator in the City of Troutdale they had an exclusion ordinance that would address behaviors, if members of the public violate park rules for example, they can be excluded from the park or trespass for a period of time. He commented when he was presented with this information he looked at it as an extension of that. He said this is a policy decision for you, whether this is something you want to have within your City and not for CIS to recommend or approve, we think it's a good idea from a risk management perspective and fitting into the overall security. He noted it gives some tools to staff to contain and address behavioral issues if citizens are coming in and making threats to staff or making threats to each other. He offered to answer Council questions.

Mayor Middleton confirmed that Tigard and Troutdale have this model. Mr. Nelson replied the City of Tigard has this model. He said when he was in Troutdale they did not have this exact model, but had an exclusion ordinance. He gave the example of an individual coming into a park and violating park rules or criminal statutes, they could be excluded for a period of time, 30, 60 or 90 days. He said if they did return during this period of time they would be cited for trespassing. He stated a number of cities around the State have exclusion ordinances similar to Troutdale. He commented that he wasn't sure if Sherwood has an exclusion policy. City Manager Gall replied no, the only exclusion policy we have is in the Library.

Mayor Middleton asked if this would include parks as well. City Manager Gall replied yes, the way it is drafted it would be all City property, it's very broad in terms of the scope.

City Manager Gall noted this is a policy choice and this is why he is bringing it to the Council, it's a tool that we could use to deal with those very rare occasions. He said he doesn't believe it would be needed very often. He said he has had staff consistently ask him what they can do to protect the work environment.

Mayor Middleton referenced the City of Portland having something similar and said he thought it was overturned, regarding drugs in a certain location. He asked if it was overturned because it wasn't broad enough. Mr. Nelson replied Portland is not a CIS member and he wasn't sure. Discussion occurred regarding the Portland situation. Mr. Nelson stated the park exclusions they had in Troutdale and other members of CIS currently have, have been upheld so far.

City Manager Gall asked City Attorney Chris Crean if he had anything to add from a legal standpoint. Mr. Crean replied it's a work in process and referred to the draft ordinance and said it needs some editing and there are also issues we want to make sure we address, such as making sure we identify what property the person would be excluded from; if they are causing a problem in a park are they just excluded from the park property or all City property. He referred to language of "the person in charge" and said you have to identify the person in charge and that should be clearly delineated. He stated any actual notice should have the correct information, for example, the reason for exclusion, the length of time, place they are excluded from, the right to appeal, etc. and making sure any exclusions that end up in a citation result in a citation for a violation and not a misdemeanor. He said these are things we want to keep in mind as we move through the process, if you think this is a useful tool. He referred to the City of Portland and said they have an exclusion ordinance and said as far as the drug free zone, he is not sure of the status.

Councilor Henderson asked if we were to pass an ordinance like this and add this to our code and if someone is cited it would go through Municipal Court. City Manager Gall replied yes. She asked if Judge Jack Morris reviewed this. Mr. Gall replied he did an initial review and made some suggestions and minor changes and he is supportive of the overall ordinance. He said Judge Morris lengthened some of the time and changed language of “shall” to “may” to give him more discretion if he were to see any appeals.

Councilor Butterfield stated his concern is if we had an altercation who is going to take care of escorting the individual out of the building, is staff going to call their supervisor or call the police? Mr. Nelson responded that he hoped 911 would be called and Sherwood Police Department would do the escorting but said it gives the discretion to the City Manager. Mr. Gall added that it would depend on the severity of the issue and whether someone was feeling physically threatened they should call 911 with or without this ordinance. Councilor Butterfield asked if that would be added to the ordinance if you are going to have the code it needs to spell out how the process works. Mr. Crean suggested that the reason for designating a person in charge is to authorize that person to order someone to be excluded, he provided an example. He stated it may not be necessary in all circumstances for the police to be involved. He noted a person should be designated for each facility.

Councilor Folsom asked what that process look likes for the employee. Mr. Gall said without this ordinance a supervisor would be contacted right away and people would come up to diffuse the situation, but if someone did not calm down or deal with the warning, right now we don't have any authority to exclude someone from the building. He said staff would like this tool. He stated this is an attempt to find balance between free speech rights but also protect the work environment. He stated he is looking for a tool and this is a tool other cities have utilized. He asked Council for direction for moving forward with this issue.

Councilor Folsom stated she is supportive and asked if the process was to ask them to leave and issue a citation. Police Chief Groth said this would probably operate much like other exclusion processes and gave an example of a typical process and said if it comes to it there will be an exclusion notice that discusses what the problem was, the exact place they are excluded from, and the period of time. He said it becomes a criminal matter if the person returns to that place before the time period is up and they potentially risk being arrested for trespassing. He stated the exclusion notice does carry punitive sanctions.

Mr. Crean noted that the process that the Chief described is explained in Section .090.

Mayor Middleton asked what the difference is between this and a trespass letter.

Chief Groth replied that the other terminology often used is “the person has been trespassed from”, and any property owner has the ability to exclude or trespass someone from their property. He noted typically the difference between trespass and exclusion is exclusion is generally for a period of time. He said yes, we do those trespass letter now.

Mr. Nelson commented that an exclusion from City Hall for example, does not preclude them from doing business with the City, they just can't physically enter the premise.

Councilor Grant asked about situations with individuals damaging city property and whether this tool could be helpful in those circumstances.

Assistant City Manager Tom Pessemier replied that this was an issue a few years ago and Council directed staff to be proactive and explain the rules to such individuals.

Chief Groth stated that they still have that issue but it has gotten better due to everyone's efforts. He replied that yes, this would be useful in those situations by providing a non-criminal sanction and these individuals could be excluded for a period of time.

Councilor Langer referred to the mention of staff difficulties in the past and asked about the City's liability concerning insurance claims with regard to employee safety.

Mr. Nelson responded there are 2 possibilities under that scenario. He stated if the employee is injured either physically or emotionally it could have some workers compensation issues to address and he stated the City of Sherwood does not have Workers Compensation with CIS. He said the other option, if the employee was injured to the point that they felt that the City staff or management did not do enough to protect them they could file a tort notice and that would involve CIS and we would end up defending the City. He said that would be very unlikely and it would more than likely fall under Workers Compensation.

Councilor Langer asked for an example of the problems that have occurred in the past. Chief Groth replied there have been two to three times where the Police have gone to Public Works to deal with out of control customers.

Mr. Nelson commented that due to certain circumstances in Sherwood in 2010, he was asked to provide work place violence training to the staff, but he did not know the specifics of the circumstances.

Councilor Langer referred to Section F which states "including but not limited to, conduct that creates unreasonable noise, or conduct that consists of loud or boisterous physical behavior" and said that sounds a little vague and asked how that is measured.

Mr. Nelson replied that he would consider vulgar use of language and specific threats to staff enough to start the process, situations that rise to a disorderly conduct level. He said this is a tool to be used and sets the tone that you are not going to allow your employees to be treated that way.

Councilor Clark commented on dispute resolutions and having this in place in Sherwood would be good and referred to experiences she has had with individuals damaging City property and said having a culture of respect would be a good idea.

Mayor Middleton asked for a consensus from the Council for staff to continue working on this. Council agreed and thanked Mr. Nelson for the information.

Mayor Middleton addressed the next agenda item.

7. NEW BUSINESS

A. Resolution 2013-065 Extending the Portland General Electric Company Franchise Agreement through June 30, 2014

City Manager Gall said staff have asked for extensions previously under the Consent Agenda and decided to put this under New Business. He stated we are still in negotiations with PGE and have a 20-year plus franchise agreement with them. He said we are hoping to be done with negotiations by the end of December 2013 and are now asking for another 6 months. He said he needs an extension adopted by resolution to extend the current contract.

Councilor Folsom asked what the problems with the negotiations are.

Mr. Crean said they are not sure but sent a draft of a new franchise agreement and PGE returned a matrix of issues. He said they sent PGE the draft again and asked them to mark up the draft and that will help us narrow the issues. He referred to the two page matrix, but is not sure what are big issues and what can be easily resolved.

Mr. Gall referred to other negotiations that drag out with PGE. Mr. Crean stated these tend to drag on and commented that they tend to negotiate the same things repeatedly, but there is willingness from both parties and said they could reasonably wrap this up by February.

Council President Henderson asked if the intent was to sign a 20 year agreement. Mr. Gall responded it would be more like a 15 year agreement.

Councilor Henderson asked what is unique about PGE franchise agreements with Sherwood versus other cities. Mr. Crean said he does not know but will get back to her, but it may have to do with underground or right of way requirements.

With no other comments or questions, the following motion was received.

MOTION: FROM COUNCIL PRESIDENT HENDERSON TO ADOPT RESOLUTION 2013-065, SECONDED BY COUNCILOR BUTTERFIELD, MOTION PASSED 7:0, ALL MEMBERS VOTED IN FAVOR.

Mayor Middleton addressed the next agenda item.

8. CITIZEN COMMENT

Susan Claus, 22211 SW Pacific Hwy, approached the Council and said the issue that was just discussed was not in the Council packet and asked how the citizens could get the information and asked to be on the list. She commented on a document she provided the Council and said there is a City interpretation and read the section of the Sherwood Municipal Code that states "no signature sheet may be circulated by more than one person. Each signature sheet must contain a statement signed by the circulator that each elector who signed the sheet did so in the circulator's presence, and, to the best of the circulator's knowledge, each such elector is a legal elector of the city and that the information placed on the sheet by each such elector is correct". She stated that the City has made an interpretation that elector and circulator are two separate people. She said at the County and State you can sign as an elector and a circulator and they are called E-sheets. She said we have an interpretation now at the City

that it is not City Code and said it is an incorrect interpretation. She referred to an email for the City Recorder Sylvia Murphy which stated “the City stands firm on this interpretation and circulation of E-Sheets is not allowed in the City under the current Code”. She said the remedy is going to court and the problem is it is the Council’s responsibility to interpret the Code. She suggested and referred to the timeframe and petitions being circulated that have been thwarted and said the E-sheet effort addresses a technology for people who want to sign a petition online where they sign as the elector and the circulator. She stated the problem is, in Sherwood we have made an inaccurate interpretation and the wrong person made it and said the Council has to look into this and correct it and look to the State and the County and to our citizens that are homebound and getting citizens every avenue so they can participate in the process. She suggested getting an outside set of attorneys to give the Council advice.

Mayor Middleton asked the City Manager to get back to the Council with information about this.

Robert Claus, 22211 SW Pacific Hwy, came forward and commented on the need to carry a tape recorder and referred to making the town adversarial. He provided a handout and discussed public safety and the conditions of the highway at Chicken Creek and said it has been degraded and the wetlands have been degraded according to CWS. He said the highway has moved and settled. He referred to previous attempts to handle this. He stated that the water has been misdirected out of Cedar Creek and ran back through Chicken Creek which started the degradation. He referred to expansions being allowed without storm water facilities and now the highway is deteriorating. He commented on an application to expand a parking lot and statements have been accepted as fact and the problem is the observation and the physical deterioration. He noted that Mr. Gall has a meeting on the 20th with Diane Taniguchi-Dennis who replaced Bob Cruz who tried to resolve the problem earlier and said the problem is that if you solve the problem Cedar Brook Way can be built easily. He said he would not discuss motives because that will be a matter of deposition and he will not avoid this litigation and said they had better look at that highway which is moving now and deterioration is the natural probable consequence. He said he is not involved and it is beyond his control. He stated the damage is in the 1.5 million dollar range and you have a chance to correct it but since you are the only agency that will not attend the meeting to take action you will get the benefit of the credit.

Mara Broadhurst, 28440 SW Ladd Hill Road, came forward and commented regarding Sherwood cronyism. She commented that Sherwood will be changed to “Sherwon’t” and the practice of deciding which businesses will come, which will be targeting for boycott, how long they can stay open and who will shop there. She said the cronies know it all and will determine city policy, recall Councilors that disagree, and fill their seats with fellow cronies. She referred to reader board’s subliminal messages and Facebook propaganda. She commented on policies such as big money policy and staff to be fired and taxes to pay for recall and appeals, no growth, no new roads, etc. She referred to politics and controversy and said to not let the unintentional consequences of activism lead to discrimination and elitism. She commented on due process being hijacked. She stated in 2006 the Planning Commission allowed for parking on both sides of the neighborhood route designated for Cedar Brook Way and this had an impact on how the area was developed. She said there are more changes coming to the area and the integrity of connector road standards need to be in place to function properly regardless of land use changes. She suggested scrutinizing the whole area and protecting the rest of the Cedar Creek wetlands from the impact of building and said development needs to be a priority. She asked how much more pressure from pressure groups will it take before due process for all suffers. She said the staff is experienced and dedicated and a major factor in getting Sherwood to number 5 small town in America and they are good at their jobs and we should let them work and maybe we will get to number 1.

Scott Oldham, nonresident but working in Sherwood, said he has been working for Edwards Painting and is working on the Cannery Row project. He stated they were hired by KeyWay Corporation and has a long relationship with them. He said Edwards Painting has been on probation with the State with wage issues and so forth. He said he has been let go and referred to the disrespect to the workers and the wages weren't been paid. He commented on former jobs with KeyWay concerning drug use on the job and instead of addressing it they shoved it under the table and tried to forget the whole thing, which turned into the man who came forward getting fired. He said they have contacted a federal agency that is looking into all of this including, interrogation, threats, intimidation, surveillance, threats of surveillance, restraining, lay off employees, firing employees, etc. He stated he came before Council and said there should be something they look at before they hire contractors. He referred to a confrontation with a KeyWay employee and wanted the Council to know what was going on over there and will be informing the owners and the developers.

Mayor Middleton suggested he contact staff regarding this issue.

Tom Pessemier clarified that KeyWay Corporation works for Capstone and does not have a contract with the City, he said it is a private project. He offered to meet with Mr. Oldham.

Wyatt McMinn, nonresident, came forward and said this is happening in your town and it is a nice project but wanted to stress that these contractors are taking advantage of people and he referred to a pamphlet they made and a post card that can be signed and sent in.

Mayor Middleton addressed the next agenda item.

9. COUNCIL ANNOUNCEMENTS

Councilor Clark thanked Mr. Gall for organizing the Christmas Tree Lighting and said it was a great community event and appreciated the tent and all the donations.

Councilor Henderson announced a Citizen Charter Review Committee has been set up and said they meet every two weeks on a Thursday night in the Community Room and all the information is on the website. She said there will be time for public comments. She reminded everyone that the City Charter is our own local constitution. She said it is a very important document and commented on the importance of it being applicable and updated and should be revisited periodically. She stated the committee is hoping to have suggested changes to the Charter in the May election and she is recommending they separate the various proposed amendments on the ballot. She said the Charter was last amended in 2005 and is on the City website for review.

Councilor Folsom commented that there was a percussion ensemble in the Cannery Square last Friday night and said they have CDs for sale on the band website and said they are skilled and have a new band director this year. She thanked everyone for attending the Voices of Performance Christmas Concert and said they had 130 performers on the stage. She thanked the community and said the tree lighting was great and thanked the Robin Hood Festival Committee for organizing the parade and the singing. She thanked City Recorder Sylvia Murphy for decorating the float.

Councilor Henderson also thanked the City Recorder and the Public Works Department for getting the float ready for the parade.

Mayor Middleton echoed the comments and thanked the Police Department, Public Works, and the Robin Hood Festival Association.

Mayor Middleton addressed the next agenda item.

10. CITY MANAGER REPORT

Mr. Gall said the next Charter Review Committee meeting is December 19 at 6:30 pm. He noted that there is a Budget Committee opening and applications will be accepted until 5:00 pm January 17, 2014.

Mayor Middleton adjourned to a URA Board of Directors Meeting at 8:17 pm.

Submitted by:

Sylvia Murphy, MMC, City Recorder

Bill Middleton, Mayor